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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140115049-4528-02]

RIN 0648-XD456

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to four large medium or giant BFT for the September, October through November, and December time periods of the 2014 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective September 1, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*)

governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Atlantic Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, the 2011 BFT quota rule (76 FR 39019, July 5, 2011) implemented the base quota of 435.1 mt for the General category fishery (a commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. As published in the final 2014 BFT quota specifications (79 FR 38255, July 7, 2014), the baseline General category quota and subquotas as codified have not been modified. The baseline General category subquotas include 115.3 mt for September, 56.6 mt for October through November, and 22.6 mt for December.

Unless changed, the General category daily retention limit starting on September 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default

retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

For the 2013 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for the January subquota period (77 FR 74612, December 17, 2012), which closed February 15, 2013, when the subquota was met (78 FR 11788, February 20, 2013); three large medium or giant BFT for June through August (78 FR 26708, May 8, 2013); three large medium or giant BFT for September 1 through November 26 (78 FR 50346, August 19, 2013); and five large medium or giant BFT for November 27 through December 31 (78 FR 72584, December 3, 2013). NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to two large medium or giant BFT for the 2014 January subquota period (78 FR 77362, December 23, 2013), which closed March 21, 2014, when the subquota was met (79 FR 15924, March 24, 2014). For the June through August 2014 period, NMFS adjusted the daily retention limit to four large medium or giant BFT (79 FR 30745, May 29, 2014).

#### Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable

opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the September through December 2014 General category fishery. These include, but are not limited to, the following considerations.

Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously implemented and analyzed in the 2011 BFT quota final rule (76 FR 39019, July 5, 2011), consistent with the objectives of the 2006 Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: "Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems." Commercial-sized BFT migrated to the fishing grounds off New England by early June and are actively being landed.

As of August 13, 2014, 111.5 mt of the 2014 General category quota of 435.1 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from one time period to the next, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2014, absent agency action, NMFS anticipates the full 2014 General category

quota may not be harvested.

A limit lower than four fish could result in unused quota being added to the later portion of the General category season (i.e., rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next. Increasing the daily limit to five fish may risk exceeding the available General category quota. Further, less than 4 mt remain in the Reserve category for potential transfer to fishing quota categories following a recent transfer of 15 mt to the Harpoon category (79 FR 47381, August 13, 2014) and anticipating the accounting for authorized landings made under exempted fishing permits. Increasing the daily retention limit to four fish will increase the likelihood that the General category BFT landings will approach, but not exceed, the annual quota, as well as increase the opportunity for catching BFT harvest during the September through December period. Increasing (and sometimes maximizing) opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on all of these considerations, NMFS has determined that a four-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. BFT quota, without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the BFT fishery; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from

the default limit (one) to four large medium or giant BFT per vessel per day/trip, effective September 1, 2014, through December 31, 2014.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of four fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

#### Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and retention limit adjustments.

#### Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons.

The regulations implementing the 2006 Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of the species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the necessary data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2014, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For

these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: August 20, 2014

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